

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA :

- V - :

SUREN GADAYEV :

Defendant. :
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AFFIRMATION

15 Cr. 66 (LTS)

I, Robert M. Baum, hereby affirm under penalties of perjury,
pursuant to 28 U.S.C. § 1746, as follows:

1. I am an Assistant Federal Defender with the Federal
Defenders of New York and have been assigned to
represent defendant Suren Gadayev in this case.
2. I make this declaration in support of Suren Gadayev's
motion for relief in the NOTICE OF MOTION submitted
herewith.
3. All statements herein are made upon information and
belief unless otherwise indicated.
4. I have reviewed documents and records provided by the
Government and conducted independent investigation into
the facts and circumstances surrounding this case.
5. Suren Gadayev is charged in the instant indictment with
two counts, Conspiracy to Commit Extortion and
Extortion. See Indictment, Exhibit A.
6. Mr. Gadayev was arrested and taken into custody on
January 26, 2015, by two F.B.I. agents. He was
handcuffed and taken by car to presumably, F.B.I.

headquarters for processing and questioning.

7. During the trip by car, Mr. Gadayev was questioned about the events underlying the charges against him. He was not given Miranda warnings. He provided his version of the events without any understanding of his rights.
8. Within ten minutes after his arrival at F.B.I. offices, Mr. Gadayev was taken to a room for questioning. He was handcuffed to a bar on the wall.
9. He was told after sitting down, "we already did this one time, we are going to do this again. We're just going to read you your rights," (See Defense Exhibit B, video tape (CD) of statement, at 9:31), clearly indicating that Mr. Gadayev had made a prior statement without Miranda warnings.
10. The Miranda warnings were read to Mr. Gadayev from a form. Before signing, Mr. Gadayev read the form and questioned its meaning. He asked, "without a lawyer's presence, isn't that against me? Isn't it against me if I answer questions without a lawyer's presence?" Exhibit B at 10:55.
11. Mr. Gadayev was told by one agent, "if you want a lawyer you can ask for a lawyer, but its not held against you." Exhiibit B at 11:05. The second agent also said "it's not held against you."
12. Mr. Gadayev signed the form and continued to speak

about the circumstances underlying his arrest. There was no explanation or clarification of the statement by the agents that "it would not be held against you." Mr. Gadayev's understanding of this statement had nothing to do with the presence or absence of a lawyer as being held against him. He answered questions because he believed that even without a lawyer, nothing he says would be held against him.

13. Because Mr. Gadayev did not understand his Miranda rights, any purported waiver was not knowing and voluntary.
14. In addition, the agent's process of taking an unwarned statement, then a short time later asking Mr. Gadayev to repeat that statement after warnings, constituted a deliberate attempt to undermine the Miranda warnings, thus making the second statement involuntary despite the failure to adequately and incorrectly explain the warnings.
15. At a joint trial, the Government will seek to introduce evidence that the co-defendant engaged in similar extortionate conduct on a prior occasion by committing a violent act to collect a debt. Such evidence would be inadmissible against Mr. Gadayev if he were tried alone.
16. Given the highly prejudicial nature of such evidence

• which goes directly to the heart of the charges herein,
a limiting instruction to the jury would likely be
insufficient to cure the prejudicial impact, warranting
a severance.

WHEREFORE, on the grounds set forth in the attached
Memorandum of Law, it is respectfully requested that this Court
enter an Order granting Mr. Gadayev's motion to suppress his
video statement as well as any prior unwarned statement, obtained
in violation of his Fifth and Sixth Amendment rights. We also
seek an Order granting a severance for the reasons set forth more
fully herein.

Dated: New York, New York
May 15, 2015

A handwritten signature in black ink, appearing to read "Robert M. Baum". The signature is fluid and cursive, with a long horizontal line extending from the end.

ROBERT M. BAUM, ESQ.